



SURREY COUNTY COUNCIL

AND

[PROVIDER'S NAME]

**APS CONTRACT
FOR THE PROVISION OF
HOME BASED CARE AND
SUPPORT SERVICES**

Articles of Agreement

This Contract dated the _____ of _____ 201X is made between **SURREY COUNTY COUNCIL** of County Hall, Penrhyn Road, Kingston upon Thames, KT1 2EN (“**the Council**”) of the one part and

[_____] registered number [_____]
whose registered offices is at [_____]
_____ (“**the Provider**”) of the other part

WHEREAS

- A. The Council is a Local Authority as defined by Section 270 of the Local Government Act 1972 and has a duty under Section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- B. The Council requires the provision of Home Based Care and support services (“**Services**”).
- C. The Council intend establishing an APS (Awarded Provider Status) List for procuring the **Services** in accordance with the Public Contracts Regulations 2015.
- D. The Council invited potential Providers (including the Provider) to tender for the supply of the **Services**.
- E. On the basis of the Provider’s tender, the Council selected the Provider to enter into this Contract to provide the **Services** to the Council and for CCG’s to Call-Off the **Services** in accordance with the provisions of this Contract
- F. This Contract sets out the ordering procedures for the **Services** which may be required by the CCGs, on the terms and conditions of this Contract
- G. It is the Parties intention that there will be no obligation for the Council or any of the CCGs to place any Support Plan/Purchase Order under this Contract during the Contract Period.
- H. It is the intention of the Parties that the Provider will enter into a Call-Off Agreement with the CCGs in the form set out in Schedule 5 to supply the **Services** to the CCGs

NOW IT IS HEREBY AGREED BETWEEN the Parties as follows:

1. This Contract commences on xxx (“**the Commencement Date**”).
2. This Contract is for an initial Period of two years (2) from the Commencement Date unless terminated earlier in accordance with **Condition 17** (Termination) or extended at the sole discretion of the Council in accordance with **Condition 6 (Contract Period)**.
3. In the event of the Contract being extended in accordance with **Condition 6** the Contract will be reviewed as set out in this Contract.
4. The Provider irrevocably undertakes to provide the Services strictly in accordance with these Articles of Agreement, and the Conditions of this Contract including the Provider’s Response the Specification and Tender Documents and these documents are available at the following link: (***link to be published***) terms and conditions.



IN WITNESS WHEREOF the Parties have executed this Contract in accordance with their respective constitutions the day and year first above written

EXECUTED as a Deed by affixing the COMMON SEAL of SURREY COUNTY COUNCIL in the presence of and attested by:

Authorised Signatory

A. Company with a company seal

Executed as a deed by affixing the common seal of

**The Common Seal of
[]
was hereunto affixed in the presence of:**

.....
Director

.....
Director/Company Secretary

or

B. Company without company seal

1) EXECUTED as a Deed by)

**[Name of Executing Company]
acting by [Name of First Director]**

a director

and [Name of Second Director/Company Secretary]

***Delete as appropriate**

Second Director/Company Secretary.....

***Delete as appropriate**

or

2) EXECUTED as a Deed by

**[Name of Executing Company]
acting by Name of Director]**

a director, in the presence of

Signature of witness.....

Witness Name:

Witness Address:

Witness Occupation:

NB: A witness must be someone who knows the signatory but cannot be a partner, spouse or relative and must not be a member of COUNCIL.

or

3. Where the Service Provider is a Partnership

SIGNED as a Deed by

[Name of Partner]

Partner.....)

for and on behalf of the partners in the firm of

[Name of Partnership]

in the presence of:

Signature of Witness

Witness Name:

Witness Address:

Witness Occupation:

OR

4. Where the Service Provider is a Charity

SIGNED as a Deed on behalf of xxxxx Trust:

Executed by [.....] and [.....]

being two of the Trust's trustees for and on behalf of all the Trustees

as directed by..... TRUST's Constitution

..... **Trustee (Authorised Signatory)**
..... **Trustee (Authorised Signatory)**

Index of Terms and Conditions

<u>Clause</u>	<u>Heading</u>
1.	Introduction
2.	Definitions and Interpretation
3.	Interpretation of Contract
4.	Accessible Information Standard
5.	Call-Off Agreement
6.	Contract Period
7.	The Services
8.	Performance of Services
9.	Obligations of the Provider
10.	Legislation
11.	Freedom of Information Act
12.	Insurance and Indemnity
13.	Unlawful Discrimination and Equal Opportunities
14.	Payment
15.	Disputes
16.	Default
17.	Termination of this Contract
18.	Termination on Individual Support Plan
19.	Ordering Procedures
20.	Assignment and Sub-Contracting
21.	Complete Agreement
22.	Waiver
23.	Variation
24.	Appointment of Representatives and Notices
25.	Liaison and Communication
26.	Best Value
27.	Users Covered by this Contract
28.	Legislative Requirements
29.	Force Majeure
30.	Contracts (Rights of Third Parties) Act 1999
31.	Bribery, Corruption and Collusion
32.	Confidentiality
33.	Data Protection and Security
34.	Care Quality Commission and Registration
35.	Appointment of Representations and Notices
36.	Assistance in Legal Proceedings
37.	Agency
38.	Observance of Statutory Requirements
39.	Publicity
40.	Contract of Copyright
41.	Liability of Council
42.	Right to Set-Off and Recovery of Sums Due
43.	Rights of Audit
44.	Severance
45.	Costs

46. Warranty
47. Rights Cumulative
48. TUPE (Transfer of Undertakings Protection of Employment Regulations)
49. TUPE Indemnity
50. Staffing Matters
51. National Minimum Wage
52. Modern Slavery Act 2015
53. Social Value
54. Information on Re-Tendering
55. Gratuities Tips and Charges
56. Equipment, Materials and Consumables
57. Provision of Information
58. Regular Meetings of Council and Provider
59. Complaints
60. Notification of Complaints
61. Quality Assurance
62. Inspection
63. Breaches of Conditions or Specification
64. Human Rights
65. Rights Cumulative
66. Good Faith
67. Instructions
68. Patents and Copyright
69. Intellectual Property Rights
70. Health and Safety
71. Standards to be Employed
72. Identification
73. **Not Used**
74. Conflicts of Interest
75. Management Information
76. Monitoring
77. Declaration of Interests
78. Whistleblowing
79. Non-Exclusivity
80. Standing Orders of the Council
81. Law and Jurisdiction

SCHEDULES

1. Service Specification for Home Based Care and support services
2. Pricing and Invoicing Document Part A & B for Home Based Care and support services including Post Code Areas
3. Placement Protocol Document for Home Based Care and Support Services
4. Performance Monitoring Framework
5. Call-Off Agreement

1. INTRODUCTION

This Contract defines the terms under which the Provider shall provide Services as set out within the attached Schedules and Specification to the reasonable satisfaction of the Council.

2. DEFINITIONS AND INTERPRETATION

In this Contract the following expressions shall have the following meanings:-

the Act	means the Health and Social Care Act 2012.
Accessible Information Standard	means the formal guidance developed and issued by NHS England, known as “SCCI1605 Accessible Information”, which health and social care providers are required to comply with in accordance with s.250 of the Act. The Accessible Information Standard is aimed at ensuring disabled people have access to information that they can understand and any communication support they might need and consists of the Accessible Information Standard Specification and the Accessible Information Standard Implementation Guidance available at: https://www.england.nhs.uk/ourwork/patients/accessibleinfo/ as may be amended from time.
Authorised Officer	means a designated Officer of the Council or such other person as the Council shall appoint from time to time
Best Value	means the Council’s duty to ensure continuous improvement in the way in which its functions are exercised having regard to: (a) economy, efficiency and effectiveness as that duty is defined in the Local Government Act 1999, all subsidiary legislation and Government guidance made thereunder and relevant Technical Releases of the Audit Commission; and (b) the Council’s independent objectives including (but not limited to) performance of equality, environmental welfare and regeneration; each of which shall be considered and assessed with regard to every element of the Services

Carer	means an individual who looks after family, partners or friends in need of help because they are ill, frail or have a disability. The care provided by the carer shall be unpaid.
Care Worker	means an employee of the Provider who provides care and support to all Individuals.
CCG(s)	means the contracting bodies described in the ITT created under the Act and responsible for commissioning health services or their successors in title.
Commencement Date	means the date in paragraph 1 of the Articles of Agreement
CQC	means the Care Quality Commission with responsibility for the inspection and registration of registerable care providers and any successor regulatory body.
Commissioners	means the Council and the CCGs
Confidential Information	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential.
Contract	means this Contract comprising these contract conditions, the Schedules, Annexes the Surrey Protecting Vulnerable Adults Multi-Agency Procedures, and it includes all other documents referred to in any of the foregoing.
Contract Documents	means the Articles of Agreement and Conditions of this Contract, the Schedules attached to it, the Tender Documents including the Provider's Response and any other document agreed between the Parties in writing signed by their authorised representatives.
Contact List	means the contacts information as detailed in Schedule 2 .
Contract Period	means the period stated in Clause 6 of this Contract
Contract Standard	means all relevant provisions and standards of this Contract and those currently in existence. Where no criteria are stated in the Contract the standard is

to be to the entire satisfaction of the Council's Representative. The Council reserves the right to amend these standards as appropriate, upon giving reasonable notice.

Council	means Surrey County Council
Council's Guidelines	shall include relevant rules, procedures guidelines Policies, Codes of Practice, Standing Orders, financial regulations and standards of the Council (including but not limited to the Constitution of the Council) as set out or referred to in the Service Specification or being reasonably notified to the Provider by the Council or the Council's Representative from time to time as any of the same may from time to time be reasonably amended by the Council and notified to the Provider
Council's Representative	means the person(s) nominated from time to time by the Council responsible for the day-to-day management of this Contract on behalf of the Council.
Emergency Duty Team	means Council's out of hour's service.
External Audit	means the independent external audit of the Council's accounts under the Audit Commission Act 1998 or under the Local Government Act 1999 in relation to Best Value Performance Plans.
Fee	means the sum payable by the Council, as stated in the Support Plan, for the Services as set out in the Pricing and Invoicing Schedule 2
FOIA	means the Freedom of Information Act 2000 and any subordinate Legislation made thereunder from time to time together with any guidance and Codes of Practice issued by the Information Commissioner in relation thereto
Force Majeure	means any cause affecting the performance by either Party of its obligations under this Contract when such failure or delay is caused, directly or indirectly, through Act of God, events, omissions, fire, flood, national emergency, strikes, riot, civil commotion or other causes, whether similar or dissimilar, which are beyond its reasonable control.

Individual	means an individual person receiving support and a person who has been assessed by a Social Care Practitioner or Health Care Practitioner as requiring the Services and for whom the Provider is contracted by a Support Plan to provide the Services.
Individual Care Package	means the package of care as detailed in the Support Plan of the Individual
Information	means the meaning given under Section 84 of the Freedom of Information Act 2000.
Invitation to Tender (ITT)	means the document dated May 2017
Non Personal Care	means non physical care such as advice, encouragement, supervision and prompting; emotional and psychological support, including the promotion of social functioning, behaviour management, and assistance with cognitive functions.
Necessary Consents	means all approvals, certificates, authorisations, permissions, licenses, permits, regulations, and consents necessary from time to time for the performance of the Services
Notice	means formal communication given pursuant to the provisions of this Contract containing the word "Notice" between the Council's Representative and the Provider's Representative which must be in writing.
Party / Parties	means the Council and the Provider.
Personal Care	means assistance with bodily functions such as feeding, bathing and toileting, care falling short of assistance with bodily functions, but still involving physical and intimate touching, including activities such as helping a person get out of a bath and helping them to get dressed.
PIDA	means the Public Interest Disclosure Act 1998
Placement Protocol	means the document outlining the specific terms under which placements shall be made pursuant to Schedule 3 .
Prescribed Rate	means the rate of interest payable by either Party when in default of its payment obligations

hereunder being 3% (three per cent) above the base rate for the time being of the Bank of England

Pricing and Invoicing	means the document outlining the Council's payment terms and agreed contract pricing pursuant to Schedule 2 .
Provider	means the persons or person's firm or company whose tender has been accepted by the Council as set out at beginning of this Contract.
Provider's Representative	means the person nominated from time to time by the Provider as responsible for the day-to-day management of this Contract on behalf of the Provider as set out in Schedule 2 .
Relevant Parties	means those independent providers of care services that are members of the Surrey Provider Network including any successor thereof and its working parties.
Requests for Information	shall have the meaning set out in FOIA or any apparent request for information under the FOIA and the Environmental Information Regulations
Service(s)	means the services provided under this Contract described in Schedule 1 of this Contract, the Placement Protocol Schedule 3 and as set out in the Support Plan and the Contract Documents.
Service Specification	means the document dated May 2017 entitled Service Specification as Schedule 1 attached to this Contract
Social Care Practitioner	means the Council's employee who has overall accountability for the Individuals care. The social care practitioner shall also be responsible for the Individual assessments, creating a Care Plan and reviewing the Services required for the Individual.
Social Care Team	means the Council's team of which the Individual's Social Care Practitioner is a member.
Support Plan/Purchase Order	means the purchase order generated (where applicable) by the Council or any CCG for the Services in accordance with the terms of this Contract and the document outlining the Services to be provided to the Individual that are agreed between the Parties which shall be as set out in the

Support Plan in accordance with the Contract Documents.

Provider's Response	means the Provider's response to the ITT submitted in response to the Invitation to Tender and any other documents agreed between the Parties in writing signed by their authorized representative
Working Days	means in connection with these terms and conditions the weekdays Monday through to and including Friday 9am to 5pm, but excluding weekends and Bank/Public Holidays.
Post Code Areas	means the geographical postcode areas of Surrey which the Provider is contracted to operate within the terms of this Contract as set out in the Pricing Schedule 2.

3 INTERPRETATION OF CONTRACT

- 3.1 Except as otherwise expressly provided, all elements of this Contract are to be taken as mutually explanatory of one another.
- 3.2 In the event of any inconsistency between the provisions of this Contract and any other provisions in the Schedules as part of this Contract the provisions of this Contract shall be deemed to prevail.
- 3.3 Any ambiguities or discrepancies in this Contract shall be referred in the first instance to the Council's Representative. In the case of ambiguities, the Council shall consult with the Provider, then issue appropriate explanation and instructions in writing and the Provider shall carry out and be bound by such instructions. The Council may, if appropriate, also consult with the relevant parties before issuing any explanation or instruction. Should mutual agreement not be reached the Provider may follow the disputes procedure as set out in **Clause 15** of this Contract.

FORM OF CONTRACT

Sufficiency of Information

The Parties acknowledge and agree that any Services which may be provided by the Provider to the Council during the term of this Contract shall be provided upon these terms and conditions and subject to the prices contained in the Tender Documents.

Subject to the Council's warranties contained in this Contract the Council does not warrant the accuracy of any representation or statement of fact or law given to the

Provider by the Council, its servants or agents at any time before the execution of this Contract and the Council shall not be liable to the Provider for any loss or damage which the Provider may sustain as a result of relying on any such representation, statement, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as the relevant representation, statement, information or advice was made or given fraudulently.

3.4 In the provisions of this Contract unless the contrary intention appears:

3.4.1 the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa;

3.4.2 headings are included for ease of reference only and shall not affect the interpretation or construction of this Contract;

3.4.3 references to Clauses are unless otherwise specified, references to Clauses within this Contract;

3.4.4 "Act of Parliament" or any Order, Regulation, Statute, Statutory Instrument, Code of Practice, Bylaw, Directive or the like, whether detailed expressly or incorporated by general reference, shall be deemed to include a reference to any amendment, re-enactment or replacement of it.

3.5 **Copyright**

Any Intellectual Property Rights in the Contract shall remain the property of the Council; the Provider may obtain or make at its own expense further copies of the Contract exclusively for the use of the Provider for the performance of the Services.

4. **Accessible Information Standard**

4.1 Notwithstanding any other provision of this Contract, the Provider must ensure that the Individual receives information in formats that they can understand and are given appropriate support to help them to communicate. The Provider must comply with the Accessible Information Standard in communicating with and/or recording and/or sharing information relating to an Individual where the Accessible Information Standard is applicable to the relevant Individual i.e. where the has an information and/or communication need which is related to or caused by a disability, impairment or sensory loss. The Provider shall have particular regard to the Service Specification in order to comply with its obligations in respect of the Accessible Information Standard. As and when reasonably required in writing by the Council, the Service Provider shall, within fourteen (14) Working Days of a request,

provide the Council with such information and evidence demonstrating to the satisfaction of the Council that the requirements of this clause are being met.

- 4.2 The Provider shall have in place and publish or publicly display an accessible communication policy which is in compliance with the Accessible Information Standard. The Provider shall provide a copy of the policy and evidence of its adherence with its own policy and the Accessible Information Standard, including but not limited to, evidence of identifying, recording, flagging, sharing of information and meeting of needs of relevant Individuals, by no later than ten (10) Working Days following a written request of the Council.
- 4.3 Where the Individual has a Care Plan the Provider must, where applicable, with the Accessible Information Standard.
- 4.4 The Provider will have internal procedures in place, and ensure staff are appropriately trained on the requirements of the Accessible Information Standard and respond effectively, efficiently and professionally to all information and/or communication needs relating to all Individuals to whom they provide the Services. The Provider shall within fourteen (14) Working Days of a request from the Council provide evidence of staff competency/training records which indicates that all relevant staff and Representatives have received appropriate training regarding implementation and ongoing compliance with the Accessible Information Standard.

5. CALL-OFF AGREEMENT

The Provider agrees that if required to do so by the CCG(s) it will enter into a Call Off Agreement with the CCG(s) in the form set out in **Schedule 5** and will deliver the Services as required by the CCG in accordance with the Call Off Contract and the Support Plan/Purchase Order issued for any Individual by the CCG.

6. CONTRACT PERIOD

- 6.1 The Contract Period shall commence on the Commencement Date for a period of two (2) years unless extended in accordance with **Clause 6.2** or terminated in accordance with **Clause 17** (Termination)
- 6.2 The Council at its sole discretion may extend (“the Extended Term”) the Contract for a period of up to two (2) years by giving the Provider three (3) months written notice on or before the date this Contract would otherwise expire. The Contract will then terminate at the end of such Extended Term and may not be further extended.

- 6.3 Unless otherwise agreed in writing between the Parties, this Contract shall supersede with effect from the Commencement Date any prior agreement for the purchase of the directly commissioned Services between the Parties.

7. THE SERVICES

- 7.1 The Services shall be provided in accordance with this Contract and the Contract Documents and in particular the Placement Protocol, the Services Specification and the Support Plan or any revision thereof.

8. PERFORMANCE OF SERVICES

- 8.1 The Provider shall have and shall operate an agreed safeguarding policy and procedure, and undertake checks on its personnel and services to ensure compliance with that policy and procedure.
- 8.2 The Provider shall comply with and ensure that all Provider's personnel involved in providing the Services understand and operate in accordance with the Council's Multi-Agency Adult Protection Policy, Guidelines and Procedures for Protecting Vulnerable Adults published by the Surrey Adult Protection Committee, **(available at <http://www.surreycc.gov.uk/safeguarding-adults>)** which sets out the procedures to be followed by all agencies and professionals working together to protect vulnerable adults and comply with all guidelines and or/ code of practice issued by the Council in relation to children. The Provider shall at all times during the Contract Period perform the Services and any variations thereof authorised under these conditions with due skill, care, diligence and with utmost good faith, to the Contract Standard and to the entire satisfaction of the Council. Carrying out the Services in a skilful manner and knowledge expected of an experienced Provider of such services and any approvals given by the Council's Representative shall in no way relieve the Provider of its responsibilities or obligations under this Contract and the Provider shall employ enough persons of sufficient ability and status to supervise the performance of the Services so that they are carried out in a proper skilful manner and to the satisfaction of the Council's Representative.

9. OBLIGATIONS OF THE PROVIDER

- 9.1 In addition to its other obligations under this Contract; the Provider shall immediately inform the Council if it is under investigation by the CQC and will notify the Council of the findings of the CQC report.
- 9.2 At all times, the Provider shall provide the Services described in the Service Specification and Tender Documents with due skill, care and diligence, with the utmost good faith and in accordance with the Service Specification and any written instructions of the Authorised Officer.

9.3 The Provider shall provide each year to the Authorised Officer a copy of its audited accounts within three months of the relevant accounting reference date subsequent to those provided in accordance with any tender requirements.

9.4 The Provider shall not in any way whatsoever be, act or hold itself out as an agent of the Council nor make representations or warranties on behalf of the Council and the Provider undertakes to contract with the Council as principal and not as agent.

10. LEGISLATION

10.1 In providing the Services the Provider shall comply with all relevant UK legislation.

10.2 The Provider shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

11. FREEDOM OF INFORMATION ACT

11.1 The Provider acknowledges that the Council is subject to the FOIA and the Environmental Information Regulations 2004 and shall assist and cooperate with the Council (at the Provider's expense) to enable the Council to comply with these Information disclosure requirements.

11.2 The Provider shall:

11.2.1 transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;

11.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

11.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.

11.3 The Council shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information: -

- 11.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;
 - 11.3.2 is to be disclosed in response to a Request for Information, and in no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 11.4 The Provider acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations 2004 to disclose Information: -
- 11.4.1 without consulting with the Provider, or
 - 11.4.2 following consultation with the Provider and having taken its views into account.
- 11.5 The Provider shall ensure that all information produced in the course of this Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 11.6 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with **Clause 32 (Confidentiality)** of the Contract.

12. INSURANCE AND INDEMNITY

- 12.1 Notwithstanding and independently of the Provider's obligations under this Contract the Provider shall at all times at its own expense maintain in force insurance policies with reputable insurers or underwriters approved by the Council which shall fully insure and indemnify the Provider against its liability under this Contract in the following amounts;
- 12.1.1 employer's liability cover in respect of the Providers business generally of at least £10,000,000.
 - 12.1.2 public liability (including health care extension) per incident under such policy of at least £10,000,000 and
 - 12.1.3 professional indemnity insurance cover in respect of the Provider's business generally of at least £2,000,000,
- in respect of any one occurrence or series of occurrences arising out of one event.

- 12.2 The Provider shall, before the beginning of the Contract Period and annually thereafter and at such times as the Council may reasonably require, supply the Council with certified copies of all insurance policies or a broker's letter of certification in sufficient detail to demonstrate compliance with this **Clause 12** required by any of the provisions of this Clause.
- 12.3 The Provider hereby indemnifies and holds harmless the Commissioners from and against any claims losses liabilities and damages in respect of any act or default of the Provider, its' servants or agents arising directly or indirectly as a result of the performance or non-performance of the Services or provisions of this Contract by the Provider.
- 12.4 The Provider hereby indemnifies and hold harmless the Commissioners for all losses, expenses, liabilities, claims, damages and costs the Commissioners may incur or suffer in relation to any claims or allegations by a third party that its intellectual property rights have been infringed by the Provider.
- 12.5 Without prejudice to its liability to indemnify the Commissioners under this **Clause 12** the Provider shall indemnify the Commissioners against any liability in respect of death, or injury to any person, or loss of, or damage to any property connected with the provisions.
- 12.6 The Provider shall indemnify the Commissioners against and hold the Commissioners harmless from all loss damages injury liability costs (including legal costs on a full indemnity basis) fees and expenses caused by or arising as a result of any breach of this Contract negligence act or omission by the Provider its employees directors managers agents and/or contractors.
- 12.7 The Commissioners shall not be liable for any loss or damage howsoever arising except for loss or damage directly arising from negligent acts or omissions of the Commissioners its servants or agents causing personal injury or death. Damages arising from negligent acts or omissions shall be limited to direct and unavoidable losses and the Provider shall take all reasonable steps to mitigate such losses.
- 12.8 The Council does not warrant the truth or accuracy of any representation, which may have been made to the Provider prior to it entering into this Contract. The Provider acknowledges that it did not rely upon any representation made by or on behalf of the Council when entering into the Contract but relied upon its own investigations and enquiries.
- 12.9 The insurance cover may reasonably increase from time to time at the reasonable request of the Council, and this request shall not unreasonably be denied.
- 12.10 The Provider shall ensure that adequate insurances are in place for any

staff and/or any sub-contractor staff in accordance with this **Clause 12**.

- 12.11 The insurance in respect of claims for personal injury to, or the death of, any person under a contract of service or apprenticeship with the Provider and arising out of and in the course of such person's employment shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any Statutory Orders made there under.
- 12.12 The Provider shall use reasonable endeavours to immediately notify the Commissioners and its insurers of any happening or event which may give rise to a claim, demand, proceeding, damage, cost or charge which is the subject of the indemnity under this **Clause 12**, and arising out of this Contract. The Provider shall indemnify the Commissioners against any loss whatever which may be occasioned to the Commissioners by the Provider's failure to give such notification.
- 12.13 The Provider shall effect and keep in force the insurance referred to above upon the same terms and conditions as the terms and conditions of the policies supplied by the Provider to the Council in writing prior to the parties entering into this Contract or upon such other terms and conditions as the Council shall reasonably require or agree to in writing.
- 12.14 If the Provider shall fail to effect and keep in force the insurance referred to above or any other insurance which it may be required to effect under the terms of this Contract the Council may effect and keep in force insurances and pay such premiums as may be necessary and deduct the amount so paid by the Council from any monies due or which may become due to the Provider or recover the same as a debt due from the Provider.

13 UNLAWFUL DISCRIMINATION AND EQUAL OPPORTUNITIES

- 13.1 In the performance of the Services the Provider shall comply and shall ensure that its employees, staff personnel agents and sub-Contractors comply with the best professional practice in relation to equal opportunities in particular (but not limited to) all relevant legislation and the Equality Acts 2006 and 2010 as well as statutory and other official guidance and codes of practice.
- 13.2 The Provider acknowledges that the Council has a general duty under Equality Acts 2006 and 2010 to have due regard to the need to eliminate discrimination and promote equality of opportunity in carrying out its functions.
- 13.3 The Provider shall be considered to have the same obligations as the Council under the Act when providing the Services under this Contract. The Provider shall comply with the general duty under the Act as set out in **Clause 13.2** above and any Codes of Practice issued by the Equality and Human Rights Commission including (but not limited to) the Statutory Code of Practice on Racial Equality in Employment (2006). The Provider shall be considered to be

in breach of this Clause in the event of any non-compliance with the Act and any Codes of Practice.

- 13.4 The Provider shall adopt the Council's own equal opportunities policies and procedures (as the same may be adopted and amended from time to time as notified to the Provider) to comply with the statutory requirements of the Act and accordingly shall not, when employing persons for the purpose of performing the Services, discriminate on the grounds of race directly, indirectly or by victimisation.
- 13.5 The Provider shall indemnify the Council in respect of any costs and legal expenses incurred in defending any action brought by the Equality and Human Rights Commission and/or any third party against the Council for non-compliance with the Act and/or any Codes of Practice as a result of the breach of this Clause by the Provider.
- 13.6 The Provider shall, at the request of the Council's Representative, provide for the Council a suitable breakdown of the workforce by race and grade as the Council's Representative may reasonably require in order to be satisfied as to the Provider's compliance with these **Sub-Clauses 13.2 to 13.4** above.
- 13.7 The Provider shall monitor the representation within the workforce of employees of different racial groups (meaning groups of persons defined by reference to colour, race, nationality, ethnic or national origins) and further undertakes to report to the Council the results of such monitoring at the Council's request. If it appears to the Provider or the Council that a particular racial group is under-represented in the workforce as a whole or in a particular area of work in the workforce, the Provider shall take such action as the Council may consider to be reasonably necessary to remedy the said lack of representation and encourage members of particular racial groups to apply for jobs or take up training opportunities, wherever possible. The Provider will ensure that all staff, including but not limited to Care Workers, have a sufficient command of the English language to ensure that they can communicate with and be understood by the Individual, their Carer and their families.
- 13.8 The Provider shall inform the Council's Representative as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Provider under the Equality Acts Relations legislation or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising there from, and shall provide the Supervising Officer with such further information and documentation as may be required in relation thereto.

14. PAYMENT

- 14.1.1 The Council shall make the payments in accordance with **Schedule 2** (Pricing and Invoicing) and the Payment Mechanism as set out in **Schedule 2**.

- 14.1.2 Payments will be made within thirty (30) days of the receipt of a valid and correct invoice prepared and submitted
- 14.1.3 appropriately for Services previously rendered in accordance with this Contract, unless otherwise agreed in writing by the Council's Representative.
- 14.1.3 The amount stated as due in an invoice shall be in accordance with the **Schedule 2** and be for the value of work forming part of the Services completed to the satisfaction of the Council.
- 14.1.4 The Prices shall remain as competitive during the whole of the Contract as at the time of the Provider's Response to the ITT.
- 14.1.5 All Prices must be quoted in £ sterling and all payments shall be made in £ sterling.
- 14.2 In consideration of the provision of the Services by the Provider, the Council shall pay the Provider sums due within thirty (30) days of receipt of a valid invoice for Services previously rendered in accordance with this Contract and in the format set out in **Schedule 2**. The Council shall only make payments against VAT invoices correctly submitted for Services properly performed and supplied in accordance with the Contract. Save as otherwise expressed in this Contract, in the event of failure by the Council to pay sums due within the said period, interest shall be payable on the sums due at the Prescribed Rate calculated on a daily basis which the Parties agree shall be a sufficiently substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 14.3 Such applications for payment shall comprehensively detail the Services for which payment is requested and shall contain all information stipulated in **Schedule 2**. The Provider shall supply such additional information as the Commissioners requires to verify the accuracy of such application. The Commissioners will use such means as they consider appropriate to verify the application for payment including but not limited to enquiries with third parties.
- 14.4 The Contract Rates submitted in Schedule 2 under the Providers ITT will remain fixed for the first two years of the contract. The Council reserves the right to review the Contract Rates (as defined in **Schedule 2**) thereafter annually on the anniversary of this Contract. Any increase shall not exceed the Consumer Price Index (CPI) minus one percentage point as shown by the Office of National Statistics. The data point shall be the most recent month's available data that is directly preceding the anniversary of this Contract. For the avoidance of doubt, the Council reserves the right to award a zero percent increase in Contract Rates. Any such decision made by the Council will be

based on a number of factors, including but not limited to, the Council's budgetary situation at that point in time.

15. DISPUTES

- 15.1 In the event of any contractual dispute arising under the terms of this Contract the Parties will attempt, in good faith, to resolve such disputes within 25 Working Days of the receipt of a Notice by either Party of such dispute ("First Notice"). Resolution of such disputes will be by review and negotiation between senior representatives of the Parties with authority to settle disputes.
- 15.2 If the Parties senior representatives are unable to agree a resolution by the end of this 25 Working Day period then either Party may give 10 Working Days notice ("Second Notice") of their decision to either:
- 15.2.1 issue a notice of termination, should any applicable grounds exist under **Clause 17** (Termination of Contract), or,
 - 15.2.2 request for the Parties to enter into mediation at the Parties' equally shared cost.
- 15.3 Upon receipt of the Second Notice the receiving Party shall respond in writing within the 10 Working Days notice period either,
- 15.3.1 agreeing to the proposed intention to terminate, or
 - 15.3.2 rejecting the intention to terminate, and requiring the Parties to enter into mediation at the Parties equally shared cost, or
 - 15.3.3 agreeing to enter into mediation at the Parties equally shared cost.

PROVIDED ALWAYS that the rejection of the intention to terminate in **Clause 15.3.2** above shall not prevent termination of the Contract in accordance with the provisions of **Clause 17**.

- 15.4 If the matter is not resolved under the provisions of **Clause 15.1** and the Parties agree to mediation then the dispute shall be referred to mediation to be conducted by such independent third Party ("the Mediator") as the Council and the Provider shall jointly nominate.
- 15.5 If the Council and the Provider fail to agree the Mediator within fifteen (15) Working Days after the receipt of the request, or requirement to enter into mediation then the Mediator shall be nominated at the request of either the Council or the Provider by the Centre for Effective Dispute Resolution Limited ("CEDR Solve") presently located at the International Dispute Resolution Centre 70 Fleet Street London EC4Y 1EU or any successor body.

15.6 If the Parties are unable to reach a settlement in the negotiations in mediation, the Parties shall request and, if the Mediator agrees they will act as Arbitrator, the Mediator will produce for the Parties a recommendation on terms of settlement, which sets out what the Mediator suggests are appropriate settlement terms under all of the circumstances.

15.7 Both the Council and the Provider hereby agree that the recommendation shall except in the case of manifest error be accepted by both Parties as final and binding upon the Council and the Provider.

15.8 The provisions of this **Clause 15** are without prejudice to the rights of the Parties expressed elsewhere in this Contract.

16. DEFAULT

16.1 If at any time during the Contract Period the Council determines that:

16.1.1 the Services or any part of the Services have not been carried out in accordance with the Contract; or

16.1.2 the Provider has failed to comply with any requirement made by the Council within the terms of the Contract; or

16.1.3 the Provider has adversely affected the image or reputation of the Council; or

16.1.4 the Provider is in material breach of any part of this Contract then, without prejudice to any other right or remedy available to the Council, the Council may issue a written notice to the Provider stating the nature of the default (a "Default Notice")

16.2 Any or all of the following procedures may be used upon issue of a Default Notice to the Provider and the Council shall have sole and entire discretion as to which is most appropriate:

16.2.1 the Council may make such deduction from the payment due to the Provider as the Council shall reasonably calculate as compensation to the Council in respect of the Provider's failure including all costs incurred by the Council supplying the Services in accordance with **Clause 16.2**;

16.2.2 without terminating the Contract, the Council may itself provide or procure from a third party the provision of the Services or any part of the Provider until such time as the Provider demonstrate to the reasonable satisfaction of the Council that the Provider is able to perform the Contract to a standard acceptable to the Council;

- 16.2.3 without terminating the Contract, the Council may require the Provider to remedy the default within a specified timescale at the discretion of the Council; or
- 16.2.4 the Council may terminate the whole or part of the Contract, in accordance with the termination provisions set out in **Clause 17 (Termination of Contract)**
- 16.2.5 Any expenses incurred which are in addition to the cost of the relevant part of the Services arising as consequence of suspension of the Services or procuring a third party to do so shall be recovered from the Provider in accordance with these Conditions.

17. TERMINATION OF THIS CONTRACT

- 17.1 The Council shall be entitled forthwith upon the happening of any of the following events to terminate this Contract, without prejudice to any accrued rights or remedies under this Contract such events being:
 - 17.1.1 the Provider commits a breach of any term of the contract which breach is capable of being remedied and the Provider has failed to remedy the said breach within fourteen (14) Working Days after issue of a written request from the Council that the Provider should do so;
 - 17.1.2 any material breach by the
 - 17.1.3 if the Council's Representative shall certify in writing to the Council that in his opinion the Provider has abandoned the Contract;
 - 17.1.4 if the Council's Representative shall certify in writing to the Council that the Provider without reasonable excuse has failed to commence the Services on the Commencement Date or has suspended the performance of the Services or a substantial part thereof for seven (7) Working Days after receiving from the Council's Representative written notice to proceed;
 - 17.1.5 the Provider shall have offered or given or agreed to give to any person any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to the obtaining or execution of the Contract with the Council; or for showing or forbearing to show favour or disfavour, to any person in relation to the Contract, or any other contract with the Council, or if the like acts shall have been done by any person employed by the Provider or acting on its behalf, (whether with or without the knowledge of

- the Provider);
- 17.1.6 if in relation to any contract with the Council, the Provider or any person employed by it or acting on its behalf shall have committed an offence or anything contrary to Legislation.
- 17.1.7 the Provider stops or threatens to stop trading
- 17.1.8 discovery of a material misrepresentation by the Provider.
- 17.1.9 the Provider having failed to perform a substantial part of the Services (including but not limited to a repeated failure to accept referrals) or having committed any other breach of contract which in the reasonable opinion of the Council's Representative justifies termination of this Contract.
- 17.1.10 if the Provider consists of one or more individuals, any such individual dying, entering into a composition or arrangement for the benefit of his creditors or becomes bankrupt or is the subject of similar procedures under the law of any other state;
- 17.1.11 if the Provider consists of a body corporate, the Provider having a receiver or manager or administrator or provisional liquidator appointed or has a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 or being subject to similar procedures under the law of any other state provided that an amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this clause;
- 17.1.12 if the Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed or is the subject of similar procedures under the law of any other state;
- 17.1.13 the Provider has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, of any property comprised in, or subject to, the floating charge or is the subject of similar procedures under the law of any other state;
- 17.1.14 the Provider is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, or manager, or administrator, or administrative receiver or to begin similar procedures under the law of any other state; or which entitle the Court to make a winding up order or a similar order under the law of any other state;

- 17.1.15 the Provider without reasonable cause fails to proceed diligently with the Services or fails to comply with any notices or wholly suspends the carrying out of the Services
- 17.1.16 if the Provider is a partnership and:
- i) the senior equity partners at the date hereof or a substantial number thereof leave the partnership; and/or
 - ii) it ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the reasonable opinion of the Council would adversely affect the delivery of the Services.
- 17.1.17 if the Provider is the company, where the Contractor undergoes a change of control, within the meaning of Section 450 of the Corporation Tax 2010, which in the opinion of the Council impacts adversely and materially on the performance of this Contract.
- 17.1.18 if any material change occurs in the management or control of the Provider.
- 17.1.19 if the Council discovers that any material misrepresentation was contained in the information provided by the Provider in its EOI and presentation submitted to the Council prior to acceptance and prior to the Council entering into this Contract, the Council having relied on such information in entering into the Contract.
- 17.1.20 if the Provider engages in any conduct prejudicial to the Council, provided that the Council's Representative at his absolute discretion may waive any such breach by the Provider, but no such waiver shall be effective unless given in writing.
- 17.2 The Council may terminate this Contract or any part of this Contract at any time upon giving three (3) months written notice to the Provider.
- 17.3 Upon such termination, in addition to such consequences as are set out in the other provisions of this Contract:
- 17.3.1 the Provider shall be deemed to be in breach of this Contract;
 - 17.3.2 the Provider shall forthwith cease to perform any of the Services or cease the Services within the timescales agreed with the Council;
 - 17.3.3 the Provider shall be liable forthwith to compensate the

Commissioners for any loss or damage it has sustained in consequence of any antecedent breaches of contract by the Provider;

- 17.3.4 the Provider shall fully and promptly indemnify and compensate the Council in respect of the cost of causing to be performed such Services or any part thereof as would have been performed by the Provider during the remainder of the Contract Period, to the extent that such cost exceeds such sums as would have been lawfully payable to the Provider for performing such Services (such costs to include all costs of closing out this Contract and entering into new contract(s) with replacement contractor(s)). The Council shall be at liberty to have such Services performed by any persons (whether or not servants of the Council) as the Council shall in its sole and entire discretion think fit and shall be under no obligation to employ the least expensive method of having the Services or part thereof performed;
- 17.3.5 The Council shall be under no obligation to make any further payment to the Provider and shall be entitled to retain any payments which may have fallen due to the Provider before termination until the costs, losses and/or damages resulting from or arising out of the termination of this Contract shall have been calculated; where the Parties agree that such calculation shows a sum or sums due to the Provider, the Council shall pay the Provider such sums forthwith and in any event within ten (10) Working Days of the calculation being agreed between the Parties
- 17.3.6 The Commissioners shall have the power to deduct retain or set off from any monies owing to the Provider such sums as are due to the Council or may thereafter become due to the Council under this or any other contract between the Parties;
- 17.3.7 The Provider shall forthwith release and hand over to the Council any records and work-in-progress, whether in the form of documents, computer data or other material in any medium.
- 17.3.8 The Council be entitled to enter any premises and re-possess any physical resources including the information licensed loaned or hired to the Provider and to exercise a lien over any of the physical resources or any other thing belonging to the Provider for any sums due hereunder including any goods remaining in the possession of the Provider for which payment has been made by the Council.
- 17.3.9 The Council be entitled in respect of any loss or damage to the Council resulting from or arising out of the termination of this

Contract to deduct the same from the sum or sums which would but for **Sub-Clause 17.3.5** have been due from the Council to the Provider under the Contract or any other contract or be entitled to recover the same from the Provider as a debt. Such loss or damage shall include the reasonable cost to the Council of time spent by its officers (including the time of the Council's Representative) in terminating the Provider's employment and in making alternative arrangements for a supply of the Services.

17.3.10 the Council shall be entitled to employ and pay other persons to perform and complete the Services or any part thereof;

17.3.11 where the total costs, losses and/or damages resulting from or arising out of the termination of the Contract have been calculated and deducted insofar as is practicable from any sum or sums which would but for **Sub-Clause 17.2.5** have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Provider any balance shown as due to the Provider.

17.3.12 where the Council has a right to terminate the entire Contract hereof, the Council may (as an alternative remedy) terminate the relevant Support Plan/Purchase Order only. On termination of the relevant Support Plan/Purchase Order the Provider shall be entitled to payment of the relevant price up to the date of termination, subject to the Council's right to withhold payment (or require repayment) of such monies in consequence of any breach of warranty, right of indemnity or set-off or other lawful excuse.

17.4 Anything still to be performed under this Contract shall survive upon termination of the Contract and in particular it is hereby agreed that Clause 12, (Insurance and Indemnity), Clause 15, (Disputes) Clause 17 (Termination of Contract) Clause 42, (Liability of Council), Clause 71, (Health and Safety), Clause 75 (Conflict of Interest), and of these contract conditions shall continue in full force and effect.

17.5 For the avoidance of doubt, the rights of the Council under this Clause are in addition to and without prejudice to any other rights or remedies the Council may have whether against the Provider directly or pursuant to any guarantee indemnity or bond.

17.6 Subject to any obligation to provide the Services in accordance with this Contract the Provider's obligation to provide the Services shall end on the date set out in the Council's notice.

17.7 Without prejudice to **Clause 17.6** and unless otherwise stipulated by the Council in its notice of termination, any Services that have not commenced at the date of the Council's notice shall be cancelled automatically.

- 17.8 This right of termination is in addition to any other rights of the Council under this Contract and its exercise shall be without prejudice to any claim, remedy or right of action that either party may have in relation to this Contract.

18. TERMINATION OF INDIVIDUAL SUPPORT PLAN

- 18.1 An Individual Support Plan/Purchase Order can be terminated in accordance with the provisions set out in Schedule 3 (Placement Protocol Document) to this Contract.
- 18.2 Upon such termination, in addition to such consequences as are set out in the other provisions of this Contract:
- 18.2.1 the Provider shall forthwith cease to perform any of the Services;
- 18.2.2 the Provider shall be liable forthwith to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of the Support Plan/Purchase Order by the Provider;
- 18.2.3 the Provider shall fully and promptly indemnify and compensate the Commissioners in respect of the cost of causing to be performed such Services or any part thereof as would have been performed by the Provider during the Contract Period for performing such Services under the Purchase Order/ Support Plan (such costs to include all costs of terminating this Contract and entering into new contract(s) with replacement contractor(s)). The Council shall be at liberty to have such Purchase Order/Support Plan Services performed by any persons (whether or not servants of the Council) as the Council shall in its sole and entire discretion think fit and shall be under no obligation to employ the least expensive method of having the Services or part thereof performed;
- 18.2.4 the Council shall be under no obligation to make any further payment to the Provider and shall be entitled to retain any payments which may have fallen due to the Provider before termination until the costs, losses and/or damages resulting from or arising out of the termination of the Support Plan/Purchase Order shall have been calculated; where the Parties agree that such calculation shows a sum or sums due to the Provider, the Council shall pay the Provider such sums forthwith and in any event within ten (10) Working Days of the calculation being agreed between the Parties
- 18.2.5 the Council be entitled to enter any premises and re-possess any

physical resources including the information licensed loaned or hired to the Provider and to exercise a lien over any of the physical resources or any other thing belonging to the Provider for any sums due hereunder including any goods remaining in the possession of the Provider for which payment has been made by the Council.

18.2.6 The Council be entitled in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract to deduct the same from the sum or sums which would but for **Clause 18.2.4** have been due from the Council to the Provider under the Agreement or any other contract or be entitled to recover the same from the Provider as a debt. Such loss or damage shall include the reasonable cost to the Council of time spent by its officers (including the time of the Council's Representative) in terminating the Provider's employment and in making alternative arrangements for a supply of the Services.

18.2.7 the Council shall be entitled to employ and pay other persons to perform and complete the Services or any part thereof;

19. ORDERING PROCEDURES

19.1 If the Council or any of the CCGs decide to source the Services through the Contract then it may (subject to the provisions of **Clause 19.2** place a Support Plan/Purchase Order for its Services requirements in accordance with the provisions of **Schedule 3** (the Call-Off Agreement) and the terms laid down in this Contract.

19.2 The Council and any CCG ordering the Services under this Contract shall place a Support Plan/Purchase Order with the Provider which:

19.2.1 states the Council's or the relevant CCG's Services requirements;

19.2.2 states the price payable for the Services requirements in accordance with the rates set out in the Pricing Document for those Services; and

19.2.3 Where relevant at Schedule 2 (Pricing and Invoicing) incorporates the terms and conditions of the Call-Off Agreement.

19.3 Nothing in this Contract shall oblige any CCG to place a Support Plan/Purchase Order for the Services.

19.4 The Provider acknowledges that the CCG is independently responsible for the placing of Support Plan/Purchase Orders that the CCG may wish to have provided by the Provider under the Call-Off Agreement under this Contract and

that the Council is not responsible or accountable for and shall have no liability whatsoever in relation to:

- 19.4.1 the conduct of CCG's in relation to the Contract; or
- 19.4.2 the performance or non-performance of any Care Plan/Purchase Order between the Provider and CCG entered into pursuant to this Contract.

19.5 The Council and the Provider acknowledge and agree that the CCG shall have no responsibility or liability whatsoever and howsoever incurred in relation to the Contract or the delivery of the Services so far as this relates to the provision of the Services between the Council and the Provider and the Provider shall indemnify the CCG against any loss claim liability or damage arising from the same.

20. ASSIGNMENT AND SUB-CONTRACTING

- 20.1 The Provider shall not assign any of its rights and/or obligations under this Contract or sub-contract the provision of any of the Services to any person without the previous written consent of the Council, which shall be at the absolute discretion of the Council.
- 20.2 The Council shall be entitled to assign this Contract or to assign the benefit and any of its obligations under of this Contract and shall give reasonable written notice of any such assignment to the Provider.
- 20.3 Any such consent being from the Council shall not relieve the Provider from any liability or obligation under the Agreement, and the Provider shall be responsible for the acts, defaults or neglect of any sub-contractor, its employees and agents in all respects as if they were the acts, defaults or neglect of the Provider itself.
- 20.4 The Provider shall not be permitted to novate this Agreement to any other party without the consent of the Council. The Council reserves the right to refuse such consent at its absolute discretion.
- 20.5 The Council may novate this Contract to any third party provided that the Council has informed the Provider of this intention. The Provider shall not unreasonably withhold its consent to a novation under this **Clause 20.5**. In the event that the Council novates this Agreement, the Council shall take all steps to execute or procure the execution of any necessary documents and do or procure the doing of such acts and things as may be necessary to effect a novation.
- 20.6 Payment by the Provider to any subcontractors permitted in accordance with **Clause 20.1** must be on at least as favourable terms as those of the Council to the Provider pursuant to **Clause 14**.

21. COMPLETE AGREEMENT

This Contract constitutes the entire understanding and agreement between the Parties relating to the Services and, save as expressly referred to or incorporated by reference, supersedes all prior negotiations, submissions or understandings with respect to the Services.

22. WAIVER

No failure by either Party to insist upon the strict performance of any condition of this Contract or to exercise any right or remedy upon breach of any provision of this Contract shall constitute a waiver of any condition or a waiver of any subsequent breach or default in the performance of any condition.

23. VARIATION

This Contract shall not be varied or amended unless such variation or amendment is agreed in writing by an authorised officer on behalf of the Council and by a duly authorised Representative of the Provider on behalf of the Provider. No variation shall limit or remove the Provider's obligations under the Contract.

24. APPOINTMENT OF REPRESENTATIVES AND NOTICES

24.2 Any Notice required to be given under this Contract:

24.2.1 to the Provider shall be addressed to the Provider's Representative and delivered by hand at or sent by Recorded Delivery post to the Provider's address as specified in this Contract or as otherwise notified in writing by the Provider to the Council;

24.2.1 to the Council shall be addressed to the Council and delivered by hand at or sent by Recorded Delivery post to the Council's address as specified in this Contract or as otherwise notified in writing by the Council to the Provider.

25. LIAISON AND COMMUNICATION

25.1 The Council's Representative and the Provider's Representative shall co-operate with each other to a reasonable extent to facilitate the proper and timely performance of Services under this Contract including the responsibilities assigned to them in this **Clause 25** and **Schedule 1**, (the Service Specification) and **Schedule 4** (Performance Monitoring Framework).

25.2 The Council's Representative shall provide reasonable advice support and information to the Provider as would be appropriate to any provider providing

Services under this Contract.

25.3 The Provider's Representative shall provide the Council's Representative with reasonable information and advice on all matters relating to the Provider or which are relevant to the Services provided under this Contract.

25.4 The Parties shall in relation to all matters contained or referred to in or arising in connection with this Contract act in good faith.

26. BEST VALUE

The Provider shall demonstrate to the Council's satisfaction throughout the duration of this Contract that there has been continuous improvement in the delivery of the Services in accordance with the principles of Best Value

27. USERS COVERED BY THIS CONTRACT

This Contract covers the provision of Services only for the Individuals identified by the Commissioners as requiring the Services

28. LEGISLATIVE REQUIREMENTS

28.1 The Provider must comply with all relevant current and future legislation required in the provision of the Services.

28.2 The Provider shall co-operate with representatives of the Council in any investigation carried out pursuant to the Council's statutory duties including but not limited to Surrey Multi-Agency Vulnerable Adult Procedures.

28.3 The Provider has a statutory obligation to ensure that the workplace of its staff and personnel is safe.

28.4 The Provider shall ensure that it complies with the requirements of the legislation relating to the national minimum wage.

29. FORCE MAJEURE

29.1 Neither Party to this Contract shall be liable for failure to perform its obligations under this Contract if and to the extent such failure is due to a circumstances which could not have been contemplated and which are beyond its reasonable control or of Force Majeure provided that:

29.1.1 each Party gives to the other Notice as soon as reasonably practicable describing the circumstances of the Force Majeure, including the nature, expected duration and the particular obligations affected by it and where reasonably practicable, provides regular reports with respect thereto during the period

of Force Majeure.

- 29.1.2 any failure to meet the stated obligations is of no greater scope and of no longer duration than is justified by the circumstances of Force Majeure.
- 29.1.3 any failure to meet the stated obligations which arose before the Force Majeure shall not be excused by the Force Majeure.
- 29.1.4 having regard to the nature of the Force Majeure each Party shall use all reasonable efforts to mitigate the effects and take appropriate remedial action in order to meet the stated obligations and undertake to provide the other Party with written Notice immediately it is known that the stated obligations will be met in full.
- 29.1.5 where an event of Force Majeure which prevents either Party from fulfilling any of its material obligations under this Contract continues for a period exceeding 180 calendar days either Party may terminate this Contract in accordance with **Clause 17 (Termination)**.

29.2 For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, failure to meet any foreseen regulatory changes and failure to provide adequate premises, equipment, materials, consumables and/or staff or similar matters, which a prudent and diligent provider could have avoided with the application of foresight, are not to be considered as events of Force Majeure or Acts of God.

30. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The Parties to this Contract agree that, other than the rights afforded to the CCG(s) to enforce the provisions of this Contract as a consequence of the Provider and the CCG(s) entering into the Call Off Contract, the Contracts (Rights of Third Parties) Act 1999 does not apply to this Contract.

31. BRIBERY, CORRUPTION AND COLLUSION

31.1 Neither the Provider nor any sub-contractor nor any other person employed by the Provider or acting on the Provider's behalf shall commit and the Provider warrants, represents and undertakes that in entering this Contract, neither the Provider nor any such person has committed any of the following (hereinafter referred to as "Prohibited Acts"):

- 31.1.1 offer, give or agree to give to the Council, any related party or any other person any gift or consideration of any kind as an inducement or reward:

- 31.1.1.1 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council; or
 - 31.1.1.2 for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;
 - 31.1.2 enter into this Contract or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Provider (or anyone acting on its behalf or to its knowledge) unless before such contract is made, particulars of any such commission and the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Council;
 - 31.1.3 commit any offence under the Prevention of Corruption Acts 1889 to 1916, Bribery Act 2010 or Section 117(2) of the Local Government Act 1972 or under Legislation creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or
 - 31.1.4 defraud or attempt to defraud or conspire to defraud the Council.
- 31.2 If the Provider (or the Provider's Personnel or anyone acting on its behalf or to its knowledge) commits any of the Prohibited Acts with or without the knowledge of the Provider, in relation to this Contract then the Council shall be entitled to:
- 31.2.1 terminate this Contract by notice in writing having immediate effect upon which the provisions of **Clause 17** shall apply; and/or
 - 31.2.2 require the Provider to procure the termination of any subcontract or agency agreement if the Prohibited Act is that of the Provider's sub-contractor or agent; and/or
 - 31.2.3 require the Provider to dismiss an employee of the Provider, if the Prohibited Act is committed by the employee acting independently of the Provider; and/or
 - 31.2.4 recover from the Provider any loss sustained in consequence of any breach of **Clause 31.1** by the Provider.
- 31.3 The Provider shall promptly inform the Council of the occurrence of any Prohibited Act of which it becomes aware.
- 31.4 Any termination notice given pursuant to **Clause 31.2.1** shall specify:

- 31.4.1 the nature of the Prohibited Act;
- 31.4.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
- 31.4.3 the date on which the Contract will terminate.

32. CONFIDENTIALITY

- 32.1 Neither Party shall use any Confidential Information it receives from the other Party otherwise than for the purposes of or in connection with this Contract or the Services under this Contract.
- 32.2 The provisions of **Sub-Clause 32.1** shall not apply to any Confidential Information received by one Party from the other:
 - 32.2.1 which is or becomes public knowledge (otherwise than by breach of this **Clause 32**);
 - 32.2.2 which was in the possession of the receiving Party, without restriction as to its use or disclosure, before receiving it from the disclosing Party;
 - 32.2.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 32.2.4. is independently developed without Call-Off to the Confidential Information; or
 - 32.2.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations 2004 pursuant to Clause 8 (Freedom of Information).
- 32.3 Nothing in this Clause shall prevent the Council:
 - 32.3.1 Disclosing any Confidential Information for the purpose of the examination and certification of that Party's accounts subject to the person examining and certifying such accounts having first entered into equivalent obligations in favour of the other Party to those contained in this **Clause 32**.
 - 32.3.2 Nothing in this Clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract or the Services under this Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of intellectual property rights.

33. DATA PROTECTION AND SECURITY

- 33.1 The Provider shall comply in all respects with the provisions of the Data Protection Act 1998 (the DPA) and will indemnify the Commissioners against all actions costs expenses claims proceedings and demands which may be made or brought against the Commissioners for breach of statutory duty under the DPA which arises from the use disclosure or transfer of personal data by the Provider and its personnel.
- 33.2 The Provider and any sub-contractor shall only undertake processing of Personal Data (as defined in the DPA) reasonably required in connection with the provision of the Services.
- 33.3 The Provider shall not disclose Personal Data to any third parties other than:
- 33.3.1 to its employees and authorised sub-contractors to whom such disclosure is reasonably necessary in order for the Provider to carry out the Services; and
 - 33.3.2 to the extent required under a court order provided that the Provider shall promptly inform the Council in writing of any disclosure of Personal Data it or a sub-contractor is required to make
- 33.4 Without prejudice to the generality of this **Clause 33**, where the Council is data controller for any Personal Data processed by the Provider as part of the Services, the Provider (as data processor) shall comply with its obligations under the Computer Misuse Act 1990 insofar as performance of this Contract gives rise to obligations thereunder.
- 33.5 The Provider shall in relation to all Council data held by the Provider ensure that the Provider:
- 33.5.1 encrypts any Council data on mobile devices (e.g. laptop, blackberry, USB memory sticks) and adopt appropriate password controls;
 - 33.5.2 keeps all computers, laptops and other electronic devices which hold information locked and secure and does not leave Council data in unattended vehicles;
 - 33.5.3 store all paper files in locked cabinets within a secure area;
 - 33.5.4 have in place a procedure to challenge any unauthorised or unknown individuals seen on the Provider's premises
 - 33.5.5 ensure any Council data is disposed of properly and securely.

33.7 The Provider shall not:

33.7.1 leave Council data in any unsecured are and in particular but not limited to, shall ensure that all fax machines are in a fax haven in a secure location

33.7.2 take Council data out of the Provider's premises unless prior written consent has been obtained from the Council;

33.7.3 transmit, or exchange data by any means, unless previously agreed in writing with the Council;

33.7.4 hold Council data for longer than required by law.

33.8 The Provider shall comply with its obligations, whether as data controller, data processor or otherwise under the Data Protection Act 1998 and shall promptly provide the Council with such information (including but not limited to a copy of the Provider's registration under that Act) as the Council may reasonably require to satisfy itself of the Provider's compliance.

33.9 The Provider and any sub-contractor shall only undertake processing of Personal Data (as defined) reasonably required in connection with the provision of the Services.

33.10 The Provider and any subcontractor shall inform the Council as soon as possible of any potential, allegation or actual Information Governance breach where any Data Protection or Caldicott principle may or has been breached, or when information is not treated with the appropriate level of confidentiality.

33.11 Without prejudice to **Sub Clause 33.8** where the Council is data controller for any Personal Data processed by the Provider as part of the Services, the Provider shall:

33.11.1.1 act only on instructions from the Council as data controller; and

33.11.1.2 take appropriate technical and organisational measures against unauthorised or unlawful processing or Personal data and accidental loss or destruction of or damage to Personal Data and, on request supply written particulars of the measures taken, to the Council.

33.12 The Provider shall indemnify and keep indemnified the Commissioners against all actions, claims, costs, damages, deductions, expenses, losses and liabilities incurred by the Commissioners in respect of any breach by the Provider and/or any act or omission of any sub-contractor of its obligations under this **Clause 33**.

33.13 The Provider shall, where necessary make such application for an amendment of its registration under Data Protection Act 1998 and take such other steps as may be practicable to afford the Council Call-Off to Personal Information and other information which is reasonably required by the Council for the purposes of its statutory duties or in connection with its rights and obligations under the Agreement.

33.14 Each party undertakes to the other Party that it will not knowingly place the other Party in breach of that other Party's obligations under the Data Protection Act 1998.

34. CARE QUALITY COMMISSION REGISTRATION

The Provider must be registered with the CQC for the provision of the Services.

35. APPOINTMENT OF REPRESENTATIVES AND NOTICES

35.1 In relation to the management of their respective rights and obligations under this Contract, the Provider and the Council shall be represented by the Provider's Representative and the Council's Representative respectively or such other representatives as they may from time to time nominate in writing to the other Party. Each Party's representative shall ensure that appropriate persons are appointed and available at all reasonable times for day-to-day management of the Services and liaison with each other.

36. ASSISTANCE IN LEGAL PROCEEDINGS

36.1 If requested to do so by either Party, the other Party shall co-operate fully with the requesting Party (including, but not limited to the provision of documentation and statements from its staff) in connection with any legal proceedings, Ombudsman enquiries, inquiry, arbitration or court proceedings in which the requesting Party may become involved, or any relevant disciplinary hearing internal to the requesting Party, or Individual complaint, arising out of the provision of the Services, and the co-operating Party shall give evidence in such inquiries, arbitration, proceeding or hearings.

36.2 Where either Party or any of its staff become aware of any incident, maladministration, accident or other matter which may give rise to an Ombudsman enquiry, claim or legal proceedings in respect of the provision of, or failure to, provide the Services, it shall notify the other Party's representative immediately in writing. Such notification shall include all relevant information to enable the Council's Representative and the Provider to investigate the matter fully.

36.3 Such information provided or assistance rendered pursuant to the obligation in **Sub Clauses 36.1 and 36.2** above, in whatever form, shall be at no cost

to the Party requesting the assistance.

- 36.4 Any liability which the Council incurs as a result of failure by the Provider shall be recoverable in accordance with **Clause 42 (Right to Set-Off)**.

37. AGENCY

- 37.1 The Provider is not and shall in no circumstances hold itself out as being the servant or agent of the Council for any purpose other than those expressly conferred by this Contract.
- 37.2 The Provider is not and shall in no circumstances hold itself out as being authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.
- 37.3 The Provider's staff including its key workers and agency personnel are not and shall not hold themselves out as being, nor shall they be held out by the Provider as being, servants or agents of the Council for any purposes other than those expressly conferred by this Contract.

38. OBSERVANCE OF STATUTORY REQUIREMENTS

- 38.1 The Provider shall in all matters arising in the performance of this Contract comply with all Acts of Parliament and with all Orders Regulations Statutory Instruments and By-laws made with statutory authority by Government Departments or by local or other authorities that shall be applicable to this Contract and shall indemnify and keep indemnified the Council against the consequence of any breach of its obligations under this **Clause 38**.
- 38.2 The Provider's personnel and its staff shall observe any rules applicable to any premises they have entered including but not limited to the ban on smoking at premises. The Provider shall not in the performance of this Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public.
- 38.5 In the event that the Provider does not fulfil its responsibilities and obligations under this **Clause 38** and the Council thereby incurs costs to which it would not otherwise be liable due to any law or any order, regulation or by-law having the force of law, the amount of such costs shall be reimbursed by the Provider to the Council.

39. PUBLICITY

- 39.1 The Provider shall not advertise the fact that it is providing the Services to the Council under this Contract other than with the written permission of the Council's Representative.

- 39.2 Subject to **Sub-Clause 39.3**, the Provider shall not, and shall procure that any member of the Provider's personnel or sub-contractor shall not make any public statement or issue any press releases or any other form of publicity document relating to, connected with or arising out of this Contract or the matters contained in this Contract without obtaining the Council's prior written approval as to its contents and manner and timing of its presentation and publication.
- 39.3 The Provider shall not, and shall procure that any member of the Provider's Personnel, shall not communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of this Contract without the prior written approval of the Council.
- 39.4 Either Party may make a public statement or announcement concerning the completion of this Contract if required by:
- 39.4.1 law; or
- 39.4.2 any regulatory or Government body to which either Party is subject or submits, wherever situated, whether or not the requirement has the force of law PROVIDED THAT any such statement does not contravene the duty of confidentiality contained in **Clause 32**.
- 39.5 Subject to the provisions of **Clause 32**, the Council reserves the right to publish or disseminate information about this Contract and the provision of the Services as it may deem appropriate from time to time.

40. CONTRACT COPYRIGHT

Copyright in this Contract shall vest in the Council and shall be the property of the Council absolutely.

41. LIABILITY OF COUNCIL

Any information given to the Provider is only given as a guide, unless fraudulent misrepresentation or serious omission is proven against the Council. The Provider agrees that it has ascertained for itself the accuracy of the information and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances that might reasonably influence or affect the Provider's intention to enter into this Contract or provide the Services. No claim against the Council shall be allowed whether in contract, in tort, under the Misrepresentation Act 1967, or otherwise on the ground of any inaccuracy.

42. RIGHT TO SET-OFF AND RECOVERY OF SUMS DUE

- 42.1 Each Party reserves its right at common law and in equity to set-off against its indebtedness to the other Party any debt legally recoverable and owed to

it by the other Party and any liability, damage, loss, costs, charges and expenses which it has properly and reasonably incurred in consequence of any breach by the other Party of this Contract. Each Party will endeavour to consult the other Party prior to exercising this right.

42.2 Where the Council's Representative considers that an overpayment has been made to the Provider or that any other sum is due to the Council from the Provider under the terms of this Contract due to:

42.2.1 an error in any account which has been subject to certification for payment;

42.2.2 an error in any invoice; or

42.2.3 arising from any other cause,

he or she shall serve a notice on the Provider indicating the amount or amounts he or she considers to have been overpaid or to be due to the Council and the grounds upon which he or she relies upon for considering that the relevant amount or amounts should be recovered from the Provider.

43. RIGHTS OF AUDIT

Where this Contract requires the Provider to make payments or to collect income on behalf of the Council, the Council's rights of audit shall be reserved as if the Provider was an employee of the Council, to the extent of the commitment to collect monies on behalf of the Council.

44. SEVERANCE

If any provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provisions all of which shall remain in full force and effect.

45. COSTS

Each Party shall bear their own costs of and incidental to the preparation of this Contract.

46. WARRANTY

Each Party warrants its power to enter into this Contract and has obtained all the necessary approvals to do so.

47. RIGHTS CUMULATIVE

All rights granted to either of the Parties shall be cumulative and no exercise by either of the Parties of any right hereunder shall restrict or prejudice the

exercise of any other rights hereby granted or otherwise available to it.

48. TUPE (TRANSFER OF UNDERTAKINGS PROTECTION OF EMPLOYMENT REGULATIONS)

- 48.1 The Council makes no assurances as to the effect of the Directive and the Regulations on this Contract or as to the accuracy of information regarding persons employed in the undertaking prior to award of Contract. The Provider accepts and undertakes that when it tendered for (and entered into) this Contract it has taken into consideration the provisions of the Directive and the Regulations and has considered the application or otherwise of those provisions to this Contract and has taken the appropriate action required under the Directive and/or the Regulations.
- 48.2 The Council and the Provider agree that if the transfer of the Services is governed by the Regulations, the Council shall use reasonable endeavours to request that the existing Provider of services similar to the Services transfers, on the Transfer Date, the contract of employment for each of the Transferring Employees to the Provider (save insofar as such contract of employment relate to any occupational pension schemes);
- 48.3 The Provider shall at its own cost undertake all liability for and shall fully indemnify the Council against:
- 48.3.1 all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) incurred by the Council as a consequence of the Provider's failure to consider fully the application of the Directive and Regulations to this Contract Agreement and/or have taken the appropriate action required under the Directive and Regulations and arising from the letting of this Contract Agreement; and
 - 48.3.2 all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) incurred by the Council in connection with any claim arising from a cause of action occurring on or subsequent to the Transfer Date, by all or any of the Transferring Employees as a result of their employment with the Provider .
- 48.4 The Provider shall, at its own cost and when requested by the Council, supply all such information as the Council shall consider to be required as a result of the Directive and the Regulations, including without limitation:
- 48.4.1 the number of personnel, including supervisory, administrative and agency personnel, engaged by the Provider and any sub contractor employed in the provision of the Services
 - ;
 - 48.4.2 the terms and conditions of employment of those personnel; and

48.4.3 any other information in relation to those personnel as may properly be required by the Council under this **Clause 48**.

The Provider shall indemnify the Council against any liability in law which the Council may incur by reason of a failure to supply such information within a reasonable time, or by reason of any inaccuracies in such information.

48.5 The Provider authorises the Council to use all the information provided pursuant to **Sub-Clause 48.4** for the purposes of its business or for use in the retendering the Services or any part thereof. The Council shall treat such information as confidential to itself and its advisors, save as required by law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to tender for the provision of the Services in succession to the Provider .

48.6 Prior to the termination or expiry of this Contract (or any part of it) for whatever reason, the Provider shall comply with any applicable provisions of the Regulations and the Directive including (but not limited to) the requirements with regard to consultation of affected employees pursuant to Directive Article 7 and Regulation 13 of the Regulations in respect of any transfer of an undertaking (which maybe so held by any Court or Tribunal) arising at the end of the Term or on any earlier termination of the Contract (or any part of it) for whatever reason. The Provider shall indemnify and hold harmless the Council against all claims whatsoever and howsoever arising which may at any time arise out of the failure on the part of the Provider to comply with the requirements of this **Sub-Clause 48**.

48.7 The Provider shall not during the final twelve (12) months of the Term:

48.7.1 undertake a reorganisation of Staff employed in the performance of this Contract or working methods other than in accordance with a scheme that has been submitted to and approved in writing by the Council;

48.7.2 award any pay rise which exceeds the annual rate of inflation without first having obtained the written consent of the Council;

48.7.3 agree or implement any alteration to the terms and conditions on which Staff are employed on the Contract without first having obtained the written consent of the Council; or

48.7.4 increase or decrease the number of employees employed in connection with the Services other than as discussed and agreed with the Council.

48.8 Until handover of the Services to a new Provider following expiry or termination of this Contract, the Provider shall provide sufficient Staff to fulfil its obligations under this Contract. Failure to comply with this **Sub-Clause 48.4** shall be deemed a material breach of Contract by the Provider. Without

prejudice to any other remedies available to the Council, the Provider shall indemnify the Council against any liability or costs incurred arising from failure to comply with this **Sub-Clause 48.8**.

- 48.9 On termination of the Contract for whatever reason or expiry of the Contract Period, the Provider shall discharge all wages salaries and honoraria (excluding accrued holiday remuneration (if any) of the Transferring Employees and all other costs and expenses relating to the Transferring Employees for the period from and including the Transfer Date) and will pay over all deductions properly made therefrom to the relevant authority (including but not limited to taxation and national insurance).

49. TUPE INDEMNITY

The Provider shall at its own cost fully indemnify and hold harmless the Council against all claims, losses, damages, costs whatsoever and howsoever arising that may at any time arise out of the failure on the part of the Provider to comply with the requirements of **Clause 48**. (TUPE)

50. STAFFING MATTERS

- 50.1 The Provider shall engage sufficient suitably qualified personnel to ensure that the Services are provided in all respects to the Services Specification and this Contract throughout the Contract Period, including (without limitation) during periods of absence of some members of its personnel due to sickness, maternity leave, personnel holidays, personnel training or otherwise. In carrying out the Services, the Provider shall take all reasonable steps to minimise any nuisance or annoyance to the Individual.
- 50.2 Without prejudice to the generality of **Condition 8** (Performance of the Services) the Provider shall perform the Services in accordance with the arrangements relating to personnel stated in the Services Specification and this Contract.
- 50.3 The Provider shall notify the Supervising Officer of any material amendments to the personnel arrangements during the Contract Period whether or not they fall within the provisions of **Condition 50.2** above.
- 50.4 The Provider undertakes and agrees as follows:
- 50.4.1 the Provider recognises that Services provided under this Contract are of a sensitive nature and the Provider shall be responsible for ensuring that personnel engages in and about the provision of the Services only persons who are honest, skilled, competent, diligent, trained and experienced in the work which they are to perform. the Provider shall take all reasonable precautions to ensure that it does not employ unsuitable persons to carry out the Services
- 50.4.2 the Provider shall ensure that every person used by him in and

about the provision of the Services is at all times properly instructed with regard to the Services.

- 50.4.3 that where any staffing or skill levels have been agreed with the Council, those levels will be maintained;
- 50.4.4 that it has sufficient reserves of trained and competent staff to provide the Services to the level/standard required by the Specification and meet their statutory obligations at all times, including sufficient reserves to provide cover for staff holidays, staff sickness or any other absence in accordance with **Condition 50.1**;
- 50.4.5 that it will replace promptly any staff who are assigned to this Contract and who cease to be in its employment or under its control for whatever reason and that such replacements shall in every way be suitable for the performance of the Services.
- 50.4.6 the Provider shall be responsible for ensuring that its personnel are safe and proper persons to deliver the Services in compliance with its own safeguarding policy, procedure and legal obligations and in accordance with this **Condition 15**.
- 50.5 The Provider shall, for the purposes of enabling the Council and the Supervising Officer to satisfy themselves as to the Provider's compliance with this **Condition 15** maintain at all times accurate and up-to-date records of all personnel who are and who are likely to have any connection with the performance of the Services including attendance records and shall afford the Council and the Supervising Officer full access to these records upon reasonable notice in writing by the Supervising Officer.
- 50.6 The Council reserves the right to require the Provider at no cost to the Council to remove from performing the Services any Provider personnel allocated to the performance of the Services by the Provider who in the reasonable opinion of the Supervising Officer is detrimental to the provision of the Services. For such removal, the Supervising Officer shall give notice together with reasons to the Contract Manager or the relevant assistant contract manager, and require the Provider to remove from the provision of the Services any individual member of the Provider's personnel or any sub-contractor including the Contract Manager or the assistant Contract Manager. Such personnel shall not be used again in the performance of the Services without the written permission of the Council.
- 50.7 The Council shall under no circumstances be liable either to the Provider or to its personnel for any cost, expense, liability, loss or damage occasioned by removal under this **Condition 50** and subject as aforesaid the Provider shall fully indemnify the Council in respect of any claim made by the personnel.

- 50.8 For the avoidance of doubt, the Provider shall at all times be fully and solely responsible under this Contract for the payment of all income or other taxes, national insurance contributions and levies of every kind, relating to or arising out of its employment of any individual after the Commencement Date and fully indemnifies the Council against any liability arising as a consequence thereof.
- 50.9 The Provider will provide details of employee disciplinary and grievance procedures and other policies, which the Council may request from time to time.
- 50.10 With regard to the Provider's personnel, including but not limited to full time, part time, temporary, permanent and voluntary personnel and sub-contractors and agents the Provider undertakes as follows:
- 50.10.1 to ensure that all of the Provider's personnel are Police checked in accordance with legislation (including but not limited to the Care Standards Act 2000) by ensuring all personnel have current Disclosure and Barring Service ("DBS") checks in accordance with the Safeguarding Vulnerable Groups Act 2006, Part 5 of the Protection of Freedom Act 2012 and/or Protection of Vulnerable Adults Scheme and that checks are carried out in accordance with legislation and the Secretary of State Code of Practice under Section 122 of the Police Act 1997 and any amendment thereof;
 - 50.10.2 to ensure all personnel (as required) have a current enhanced DBS Certificate of Disclosure including a check against the children's and vulnerable adults barred lists, as appropriate if the Services fall within one of the prescribed purposes under Section 5A of the Police Act 1997 (Criminal Records) Regulations 2002 and the Rehabilitation of Offenders Act Exceptions Order 1975
 - 50.10.3 DBS checks carried out for the Provider will be accompanied by written confirmation from the DBS that the Provider is either registered for the purposes of initiating DBS checks or confirmation that the Provider has used an umbrella body which is registered to undertake DBS checks
 - 50.10.4 to comply with all the requirements operated by the DBS and ensure that all of the Provider's personnel with unsupervised access to children and/or vulnerable adults are registered and checked as required;
 - 50.10.5 to ensure and undertake that all of the Provider's personnel who have lived or worked abroad for more than three (3) months in the last five (5) years obtain a Certificate of Good Conduct acceptable to the Council, or similar appropriate document, showing that the individual has not been convicted of any act

which would render them inappropriate to work with children and/or vulnerable adults;

- 50.10.6 to ensure and undertake that the Provider complies with the Council's Safeguarding requirements and the Council's Recruitment and Selection and Safer Recruitment policies which are available on the Council's website as updated from time to time; and
- 50.10.7 to ensure that the Provider's personnel have been recruited in compliance with the Council's requirements. That is proper references have been obtained including answers to the standard question "have any allegations been made against this individual either by Councils, peers or management" if so, "what was the outcome of any related investigation"; and
- 50.10.8 to undertake that the Provider keeps clear records of every member of the Provider's personnel, including their employment histories, medical clearances, proof of enhanced DBS checks disclosures, notes of face to face meetings, records of checked references and identity in accordance with the Council's Recruitment and Selection and Safer Recruitment policies.
- 50.11 In relation to previous and spent convictions if the Provider's personnel are exempt from the application of Section 4 (2) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions in Section 3 and Schedule 1 and 2 of the Rehabilitation of Offenders Act 1974 Exception (Amendment) Order 1975, the Provider undertakes it will ensure that all the Provider's personnel shall provide information in accordance with the said Act and Order in relation to convictions which would otherwise be spent under the provisions of the said Act.
- 50.12 The Provider warrants that at all times for the purpose of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereafter, as amended from time to time
- 50.13 The Provider shall respond to any requests within seven (7) days from the Council with any information that is reasonably requested to enable the Council to be satisfied that the obligations of this **Condition 50** have been met.
- 50.14 The Provider shall not employ anyone who is barred from, or previous conduct or records indicate that he/she would not be suitable to carry out a Regulated Activity or may otherwise pose a risk to Individuals.
- 50.15 The Council (at its own discretion) may refer any information about any individual to the DBS if the conditions of section 77 of the Safeguarding Vulnerable Groups Act 2006 are met.

- 50.16 The Provider acknowledges that the Council is under a duty to assist and provide such information it holds to the DBS where the DBS considers the Council holds relevant information.
- 50.17 The Provider shall indemnify the Council against all claims, proceedings, liabilities, losses, costs, damages and expenses howsoever incurred by the Council as a result of any breach of this **Condition 50** by the Provider and the Provider's personnel.
- 50.18 Throughout the Contract Period the Provider undertakes it will:
- 50.18.1 comply with the SSAB and SSCB (the Surrey Safeguarding Adults Board and the Surrey Safeguarding Children's Board) Procedures and the Council's Safeguarding Children and Vulnerable Adults Board Multi Agency Procedures or equivalent from time to time in place;
 - 50.18.2 have in place its own safeguarding procedures acceptable to the Council which will be made available to the Council and Individuals on demand;
 - 50.18.3 ensure the Provider's personnel are trained and work in accordance with the Provider's safeguarding procedures at all times including, where required, attendance at SSAB and SSCB training sessions;
 - 50.18.4 ensure that all the Provider's personnel that will be responsible for children/vulnerable adults on a one to one basis are trained in a method of restraint approved by the Council and receive up-to-date training every three (3) years; and
 - 50.18.5 the Provider shall adhere to and comply with any guidelines and/or codes of practice issued by the Council (including but not limited to the Council's Recruitment and Selection and Safer Recruitment policies) when selecting and/or recruiting employees and volunteers who may have substantial and unsupervised access to children and adults at risk.
- 50.19 The Provider shall take all reasonable steps to ensure that all persons involved in providing the Services on behalf of the Provider understand and follow Surrey Safeguarding Children and Vulnerable Adults Boards' guidance and protocols for safeguarding children and young people/Vulnerable Adults
- 50.20 All persons involved in providing the Services on behalf of the Provider shall co-operate fully with any investigation by the Council or with any person authorised by the Council to conduct an investigation into any allegations of abuse against the Provider's personnel.

- 50.21 All allegations, suspicions and incidents of abuse by the Provider's personnel must be followed up promptly. In the event that immediate danger is reasonably likely, urgent action must be taken and emergency services contacted. Details of concerns and actions taken must be recorded and reported to the Council, and if appropriate, the Police and any regulatory body.
- 50.22 The Provider shall ensure that there are robust procedures for responding to and reporting such concerns and that all personnel receive appropriate awareness training regarding Safeguarding Children and Vulnerable Adults which comply with the Council's Safeguarding Children and Vulnerable Adults and Child Protection Policies. The Provider shall also ensure that they follow the Council's Whistle Blowing Policy to protect personnel who wish to raise such concerns.
- 50.23 The Provider shall take all reasonable steps to ensure that Individuals are protected from abuse and neglect (including the misapplication of medication, with or without intent) in line with, and acting in accordance with the principles and procedures set out by the "No Secrets" Department of Health Guidance (2000).

51. NATIONAL MINIMUM WAGE

The Provider shall ensure that it complies with the requirements of the legislation relating to the national minimum wage and the national living wages rates.

52. MODERN SLAVERY ACT 2015

In performing its obligations under this Contract the Provider shall and shall ensure that each of its subcontractors shall comply with all applicable laws, statutes, regulations codes from time to time in force including but not limited to the Modern Slavery Act 2015.

53. SOCIAL VALUE

- 53.1 The Contractor shall deliver social value to the Council and provide actual and potential opportunities for improving the economic, social and environmental well being of the county of Surrey as set out in the Tender documents.
- 53.2 Where the Contractor fails or is unable to deliver social value as set out in Clause 53.1 above, the Contractor shall provide the Council with detailed reasons.
- 53.3 Where the Contractor cannot provide social value without detailed reasons the Council shall be entitled to treat such failure as a breach of contract.

54. INFORMATION ON RE-TENDERING

If requested to do so by the Council, the Provider shall provide to the Council at no additional charge any and all relevant information in its possession to permit the Council to prepare the necessary documentation in respect of any re-tendering of the Services. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise.

55. GRATUITIES TIPS AND CHARGES

The Provider shall not whether itself or by any of the Provider's personnel engage in the provision of the same solicit or accept any gratuity, tip or any form of money taking or reward, collection or charge for the provision of any part of the Services other than bona fide charges approved by the Council.

56. EQUIPMENT, MATERIALS AND CONSUMABLES

The Provider shall at all times during the Contract Period provide and maintain sufficient equipment, materials and consumables as are required for the proper and efficient performance of the Services and the Individual, their Carer or their families are not charged for this equipment, materials and consumables.

57. PROVISION OF INFORMATION

- 57.1 The Provider recognises that the Council has obligations to third parties to provide information concerning the proper performance of its functions and these obligations require the supply of information to those third parties. By way of an example, during the Contract Period, the Council is likely to have to respond to enquiries, both written and verbal, concerning the Services, from various government agencies democratically elected representatives of the public and from bodies which regulate its affairs.
- 57.2 The information provided or assistance rendered by virtue of the obligation within this Clause shall be part of the Provider's general obligations to the Council and shall be at no cost to the Council;
- 57.3 The Council shall take the lead in responding to any request for information and the Provider shall co-operate fully with the Council in such matters. In particular, the Provider shall use reasonable endeavours to ensure that its staff make no verbal response to the enquiry which is critical of the Council and could lead to claims or other similar action and that all responses to verbal inquiries are recorded in writing and copied immediately to the Council's Representative and the relevant Council's officer to whom the enquiry was reported;
- 57.4 The Provider shall allow the Council's Representative to examine such records kept by the Provider, which are relevant to the Services.

58. REGULAR MEETINGS OF COUNCIL AND PROVIDER

The Provider shall ensure that appropriate members of its staff attend regular meetings together with such other meetings as are reasonably required by the Council's Representative in relation to the performance of the Services in accordance with the provisions of **Schedule 4**.

59. COMPLAINTS

The Council shall supply to the Provider and any relevant Individual copies of the procedure for complaints against the Council upon request.

60. NOTIFICATION OF COMPLAINTS

60.1 If any person or organisation makes a complaint concerning the Services, the Provider shall immediately investigate the complaint and take such corrective action as is appropriate.

60.2 The Provider shall record all complaints of any nature, received from whatever source, in a register kept for that purpose. A photocopy of the register of complaints shall be supplied by the Provider to the Council's Representative at such times as the Council's Representative may specify. Sufficient detail shall be recorded in the register to enable the Council's Representative to ascertain the nature of the complaint, the name of the person making the complaint, the date and time when it was received; the action taken to remedy the complaint and the time and date when the remedy was completed; and names of the Provider's supervisory and other staff involved in the action complained of and its remedy.

60.3 The Provider shall have in operation a complaint policy/procedure and shall keep a record of all complaints. Information regarding complaints will be made available to the Council within the quarterly Management Information returns (as per **Schedule 4**)

60.4. The Provider's record of complaints should include:

60.4.1 The nature of the complaint;

60.4.2 The name of the complainant;

60.4.3 The date and time the complaint was received and the date it was acknowledged;

60.4.4 The action taken to remedy the complaint;

60.4.5 The date and time the complaint was remedied;

60.4.6 The names of the Provider's employees involved in the complaint and the remedy.

- 60.5 The record of complaints referred to in **Sub Clause 60.2** above shall be available at all times for inspection on reasonable notice by the Council and any other party who has the legal power/authority to request this.
- 60.6 The Provider's complaints policy must be in line with the Council's "Comments Compliments and Complaints Policy. The Provider shall manage the Comments Compliments and Complaints Policy up to Stage 1 and provide a quarterly report. Lessons learned must be incorporated to develop the quality of the Service. Any complaints not resolved at Stage 1 must be passed to the Council's nominated quality assurance representative and Council's Representative who will trigger a Stage 2 process.

61. QUALITY ASSURANCE

- 61.1 The Provider accepts that it is a condition of this Contract that it will adopt and utilise management control processes for its performance of the Services, and that such processes shall be fully effective and operational within the period agreed between the Parties.
- 61.2 The Provider shall ensure that at all times adequate and effective quality assurance procedures are maintained to ensure that the required standard of service is met and at all times to co-operate with the Council's inspect evaluate and quality audit in whatever way is reasonably requested by the Council
- 61.3 The Provider shall collect and submit the required monitoring information to the Authorised Officer as outlined in **Schedule 4**.

62. INSPECTION

At all times after the Commencement Date the Council's Representative and/or other officers of the Council may organise regular and thorough inspections of the Provider's performance to ensure that it is complying with its obligations under this Contract.

63. BREACHES OF CONDITIONS OR SPECIFICATION

The Provider is advised that breaches of the terms of this Contract are regarded as material breaches of contract.

64. HUMAN RIGHTS

The Provider in the performance of this Contract shall comply with the provisions of the Human Rights Act 1998 in all respects as if it were a public body within the meaning of the Act. The Provider shall indemnify or keep indemnified the Council against all actions, claims, demands, proceedings, damages, losses, costs, charges and expenses whatsoever in respect of any breach by the Provider of this **Clause 64**.

65. RIGHTS CUMULATIVE

All rights granted to either of the Parties shall be cumulative and no exercise by either of the Parties of any right hereunder shall restrict or prejudice the exercise of any other rights hereby granted or otherwise available to it.

66. GOOD FAITH

66.1 Both Parties to this Contract shall act in good faith towards each other in relation to all matters arising under it and in particular:

66.1.1 both Parties shall do all things reasonably within their power which are necessary or desirable to give effect to the spirit and intent of this Contract and its fundamental objectives.

66.1.2 the Council's Representative shall be given all information and other facilities he may require to ensure that the Provider is fulfilling its obligations under this Contract.

67. INSTRUCTIONS

Any disagreement over the nature or contents of any instructions, or any failure to resolve ambiguities in them, shall be referred promptly to the Council's Representative in accordance with **Clause 15** (Disputes).

68. PATENTS AND COPYRIGHT

The Provider shall not in connection with the performance of the Services, use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any intellectual property rights.

69. INTELLECTUAL PROPERTY RIGHTS

Any and all intellectual property rights developed under this Contract or arising from the provision of the Services by the Provider shall belong to the Council and both the Council and the Provider agree that they shall execute or cause to be executed (by its staff if necessary) all deeds, documents and acts required to vest such intellectual property rights in the Council.

70. HEALTH AND SAFETY

70.1 The Provider shall ensure that all persons involved in the provision of the Services, including any persons providing the Services on behalf of the Provider who are not employees of the Provider, are sufficiently competent and receive sufficient training and are provided with appropriate equipment and systems of work so as to ensure so far as reasonably practicable their health and safety and the health and safety of the Individual and those

otherwise present at the premises and any other persons who may be affected by the way in which the provision of the Services are undertaken.

- 70.2 For as long as this Contract is in force the Provider must have in place a health and safety policy that complies with all statutory requirements and provide the Council with a copy prior to the Commencement Date. This should be reviewed and updated at least annually with revised copies being made available to the Council.
- 70.3 The Provider shall when providing the Services ensure that its personnel, Council personnel or any other person acting on behalf of the Provider comply with all statutory and other legal requirements in relation to the safety and health of its personnel, Council's personnel or any other persons and the members of the public. The Provider shall in particular comply with all legislation in the field of health and safety at work and in the supply of the Services and generally perform the Services in accordance with the Provider's health and safety policy statements and the Provider's health and safety codes of practice and/or the Health and Safety Guidelines (where applicable). In the event of any inconsistency between the Provider's health and safety policy statements and codes of practice and the Health and Safety Guidelines, the Health and Safety Guidelines shall prevail.
- 70.4 For the guidance of the Provider the regulatory Framework requiring compliance by the Provider includes but is not limited to:
- The Health and Safety at Work etc. Act 1974;
 - The Control of Substances Hazardous to Health Regulations 2002;
 - The Occupiers' Liability Acts 1957 and 1984;
 - The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
 - The Health and Safety (First Aid) Regulations 1981;
 - The Workplace (Health, Safety and Welfare) Regulations 1992;
 - The Management of Health and Safety at Work Regulations 1999;
 - The Personal Protective Equipment at Work Regulations 1992;
 - The Provision and Use of Work Equipment Regulations 1998;
 - The Health and Safety (Display Screen Equipment) Regulations 1992;
 - The Health and Safety Information for Employees Regulations 1989;
 - Manual Handling Operations Regulations 1992;
 - The Electricity at Work Regulations 1989;
 - The Control of Noise at Work Regulations 2005;
 - Health and Safety (Safety, Signs and Signals) Regulations 1996; and
 - The Equality Act 2010
- 70.5 The Council's Representatives shall be empowered to suspend the provision of the Services in the event of non-compliance by the Provider with the health and safety requirements of this Contract. The Provider shall not resume provision of the Services until the Council's Representatives is satisfied that the non-compliance has been rectified.

- 70.6 No payment will be made for the supply of the Services or any part thereof omitted as result of a cessation of the Services required by the Council due to breach of any health and safety requirement and neither will any additional payment be made for steps which the Supervising Officer requires the Provider to take to remedy the breach of the health and safety requirement.
- 70.7 The Provider shall keep its health and safety policy, health and safety codes of practice and risk assessments under review and make any amendments necessary, particularly where there has been a change to current legislation or working practices or the introduction of new equipment (including vehicles) and shall notify the Council in writing of any changes made; and comply with any changes, amendments or further instructions reasonably requested or issued by the Council in connection with the Provider's health and safety procedures or the Health and Safety Guidelines (where applicable).

71. STANDARDS TO BE EMPLOYED

Under this Contract professional standards shall be adhered to together with the standard set out under this Contract in particular the standard stated in the Services Specification should be the standard. The Services performed in pursuance of this Contract shall be of the highest quality, respectful, and suitable in every respect to the nature of the specified Services.

72. IDENTIFICATION

Any personnel or sub-contractors of the Provider carrying out the Services will be required to make themselves known before entering any premises and must wear a valid and up to date photo identity badge issued by the Provider as a means of identification whilst on the premises.

73. NOT USED

74. CONFLICTS OF INTEREST

- 74.1 The Provider shall ensure that its system/procedures meets all relevant professional Codes of Practice and, if necessary, shall amend thus to ensure that they continue to do so throughout the duration of the Contract Period. The Provider shall also ensure its system/procedures are observed at all times and that it prevents the occurrence of situations, not only where a conflict has arisen, but where one is likely to arise. Any system procedure shall include, if required by the Council, a separation of duties amongst the Provider's personnel, and/or sub-contractors to prevent such conflicts arising.
- 74.2 The Provider shall ensure that, in accordance with the requirements of this Contract, it is loyal to the Council and avoids any situation, which might be seen to put its loyalty in doubt. If necessary it will amend its procedures relating to conflicts of interest to take account of this stricter duty.

- 74.3 The requirements imposed by this **Clause 74** shall continue in full force and effect and be enforceable by the Council for the period of twenty-four (24) months after the Contract Period has expired or after termination of the Contract for whatever reason.

75. MANAGEMENT INFORMATION

The Provider shall supply to the Council's Representative the management information identified in the **Services Specification** in **Schedule 1** and the **Performance Monitoring Framework in Schedule 4** or such other information as the Council's Representative may from time to time specify during the Contract Period.

76. MONITORING

- 76.1 The Provider shall keep and maintain such necessary data and information and shall provide such assistance as the Council may reasonably require to enable the Council to complete all official returns, including (where applicable) but without limitation:
- 76.1.1 returns to the Department of Health and the Department for Works and Pensions;
 - 76.1.2 returns to the Chartered Institute of Public Finance and Accountancy;
 - 76.1.3 information required by the Audit Commission;
 - 76.1.4 information required for the purposes of compliance with any External Audit, Best Value performance plans or other inspection; and
 - 76.1.5 information required in order to ensure compliance with the Equality Act 2010 and other applicable legislation and generally to ensure conformity with obligations contained in Condition 10 (Unlawful Discrimination and Equal Opportunities).
- 76.2 The Provider shall provide such data and information as the Council from time to time shall reasonably require to permit the Council to complete management reports (whether of a regular, cyclical or ad hoc nature) on the performance of the Services.
- 76.3 The Provider shall at all times during the currency of the Contract allow the Council's Representative and such other persons (including representatives of other public bodies or agencies) as may from time to time be reasonably nominated by the Council's Representative Call-Off on reasonable notice (save in the case of emergency or for statutory or audit purposes where no notice shall be required) to all offices and places of work used by the Provider for the purposes of monitoring and inspecting work being performed pursuant

to the provision of the Services and any or all records and documents in the possession, custody or control of the Provider in connection with the provision of the Services.

- 76.4 The Provider shall provide to the Council's Representative on a quarterly basis the required monitoring information as per **Schedule 4**.
- 76.5 The Provider shall allow the Council's Representative to examine such records kept by the Provider, which are relevant to the Individual and not received in confidence from another person as the Individual may authorise. The Provider shall also provide such data and information the Council requires on Individuals but always subject to the provisions of **Clause 33** (Data Protection and Security).

77. DECLARATION OF INTERESTS

The Provider shall inform the Council in writing of any elected member, employee or family member of an elected member or employee of the Council who is involved in any way with the Provider as soon as the Provider becomes aware of such.

78. WHISTLEBLOWING

- 78.1 The Provider hereby takes notice of and agrees to comply in all respects with the Council's Whistleblowing Policy and Guidelines and PIDA 1998. In particular (but without limitation) the Provider agrees:
- 78.1.1 to accept and adopt the Council's Whistleblowing Policy for Provider's as a procedure for the purposes of s.43C(2) of PIDA and the Provider agrees and acknowledges that its employees are authorised to use and rely upon the said procedure;
- 78.1.2 that to the extent that the Whistleblowing Policy and Guidelines impose duties on or grant rights, protections or immunities to Council employees or agents, the Provider agrees and irrevocably undertakes to impose similar duties and grant similar rights, protections or immunities to the Provider's employees and agents and to any sub-contractors.
- 78.2 Without limiting the generality of **Sub-Clause 78.1**, the Provider agrees to report to the Council in accordance with the Whistleblowing Policy and Guidelines any circumstances relating to or arising out of this Contract (including the entering into thereof and procurement of goods, services and supplies for the implementation thereof) and the supply of the Services, which give rise to a reasonable belief that one or more of the following matters (referred to in this Clause as "instances of malpractice") has occurred, is occurring or is likely to occur:

- 78.2.1 a criminal offence (including any form of child abuse, or the abuse of other vulnerable individuals);
 - 78.2.2 a breach or failure to comply with any lawful duty (including, without limitation, negligence and/or breach of statutory, contractual, fiduciary, administrative law or other duty);
 - 78.2.3 miscarriage of justice;
 - 78.2.4 danger to health and safety;
 - 78.2.5 damage to the environment;
 - 78.2.6 any other matter designated as malpractice in the Whistleblower Policy and Guidelines;
 - 78.2.7 concealment of any of the above
- 78.3 Without limiting the generality of **Sub-Clause 78.1** in the event that any employee, agent or sub-contractor of the Provider should make a report to the Council (or to any other person authorised by law) pursuant to this Clause, the Provider warrants that it shall use its best endeavours to ensure that such person does not suffer any form of retribution, victimisation or detriment as a consequence of having made such report.
- 78.4 The Provider agrees to indemnify the Council in respect of any loss or damage caused by or arising out of a failure on the part of the Provider to report, within a reasonable time, any instances of malpractice in accordance with this **Clause 78**, the Whistleblowing Policy and Guidelines and/or PIDA 1998.
- 78.5 Where the Provider acting reasonably and in good faith makes a report pursuant to this **Clause 78**, and the Council subsequently undertakes or omits to undertake a course of action wholly in reliance upon such report the Council accepts such liability as the Provider may incur as a direct consequence of such report.

79. NON-EXCLUSIVITY

- 79.1 The Provider acknowledges that, in entering into this Contract, no form of exclusivity or volume guarantee or placement of Purchase Orders has been granted by the Council and/or the CCGs for Services from the Provider and that the Council and/or the CCGs are at all times entitled to enter into other contracts and arrangements with the suppliers for the provision of any or all services which are the same as or similar to the Services.

80. STANDING ORDERS OF THE COUNCIL

The Contract shall be subject to the Council's Guidelines (including the Constitution of the Council) current from time to time, the contents of which

the Provider acknowledges it has had sight of and is fully aware of their contents.

81. LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with the Laws of England and the Parties submit to the exclusive jurisdiction of the English courts.

SCHEDULE 1 SERVICE SPECIFICATION

SCHEDULE 2 PRICING AND INVOICING DOCUMENT

SCHEDULE 3 PLACEMENT PROTOCOL DOCUMENT

SCHEDULE 4 PERFORMANCE MONITORING DOCUMENT

SCHEDULE 5 CALL OFF AGREEMENT